IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.3123 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SURAJBEN DAUGHTER OF BALUBHAI HARIYABHAI GOPAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3123 of 2004

MR JOY MATHEW for Petitioner No. 1

MR NAGESH SOOD, AGP for Respondent Nos. 1-2

MR ADIL MEHTA for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 09/07/2004

ORAL JUDGEMENT

RULE. Mr.Nagesh Sood, learned A.G.P., appears and waives service of rule on behalf of respondent Nos.1 and 2 and Mr.Adil Mehta, learned advocate, appears and waives service of rule on behalf of respondent No.3. With the consent of the parties, the matter is taken up for final hearing today.

2. What is challenged in the present petition is the order passed by the revisional authority dated 06/30-06-2003 passed in Revision Application No.33 of 1997 with Revision Application No.27/98 whereby dismissed the said revision applications and confirmed the order passed by the Dy. Collector, Rajpipla dated 30-11-1996 passed under Section 73-AA of the Bombay Land Revenue Code.

3. On the assumption that there is breach of Section 73-AA of the Bombay Land Revenue Code and that the petitioner had transferred the land in question to the non-tribal, proceedings were initiated by the Dy. Collector, Rajpipla and by his order dated 30-11-1996 declared that that there is a breach of provision of Section 73-AA and passed an order to confiscate the land in question. Being aggrieved and dissatisfied by the the order passed by the Dy. Collector, Rajpipla the petitioner preferred a Revision Application before the State Government i.e. Special Secretary (Appeals) which came to be dismissed and, therefore, the present petition has been filed.

4. Mr.Joy Mathew, learned advocate appearing on behalf of the petitioner, has submitted that assuming that there is a breach of Section 73-AA of the Bombay Land Revenue Code, a chance is to be given to the petitioner to restore the land and to take back the land, that opportunity was not given to the petitioner by the Dy. Collector. Mr.Mathew further submitted that though the aforesaid point was argued, the learned Sp. Secretary, Revenue Department (Appeals) has not dealt with the same.

5. From the bare reading of the judgement and order dated 06/30-06-2003, it seems that the revisional authority has not considered the submissions on behalf of the petitioner with regard to Section 73-AA(5) of the Bombay Land Revenue Code which was also not even considered by the Dy. Collector, Rajpipla.

6. In view of the aforesaid facts, the judgement and order dated 06/30-06-2003 passed in Revision Application No.33 of 1997 with 27 of 1998 are hereby quashed and aside. The matter is remanded back to the learned Special Secretary, Revenue Department (Appeals), Government of Gujarat for deciding the same afresh considering the submission made on behalf of the petitioner with regard to not giving an opportunity of hearing under Section 73-AA(5) of the Bombay Land Revenue

Code. Such an exercise is required to be completed within a period of 03 (three) months from the receipt of copy of this order.

7. Rule is made absolute of the aforesaid terms, with no order as to costs. Direct service permitted.

Sd/-

[M.R.SHAH, J]

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'Bhavesh'